

assigning to him a guardian *ad litem*. If a guardian so appointed refuses to act, or after accepting the trust dies, another may be appointed in his stead by special order or under a commission. 2 *Newl. Chan.* 155; *Wilson v. Bott*, 1 *Pric.* 62; *Perkins v. Hammond*, *Dick.* 287; *Smith v. Marshall*, 2 *Atk.* 70; *McMechen v. Evans*, MS. 3d November, 1817. But although a person appointed guardian *ad litem* cannot be compelled to take upon himself the trust; yet if he does accept it, he may be compelled by attachment to appear and answer. *Taylor v. Durben*, 1787, *Chan. Proc. lib. S. H. H. let.*

554 *B, fol. 41.(g)* For a long time past it has been *considered as the settled practice, to let a commission go to one commissioner only within the State to appoint a guardian and take the answer of an infant defendant; which has been found to be so cheap and convenient a method, that I have never known a commission, in my time, to be issued for that purpose to more than one commissioner within the State. *Brown v. Brooker*, MS. October, 1800, &c., &c.

In England, when an infant defendant resides out of the jurisdiction of the Court, a commission may be sent abroad to appoint a guardian and take his answer, and on a supplemental bill being afterwards filed the same guardian may be authorized to answer for him. *Jongsma v. Pfiel*, 9 *Ves.* 357; *Lushington v. Sewell*, 6 *Mad.* 28. But no instance has been shewn, prior to the year 1797, in which a commission has issued from this Court, to obtain the answer of an infant defendant beyond the jurisdiction of the Court, to a single commissioner only. In the case cited; *Diffendall v. Diffendall*, *Chan. Proc. lib. S. H. H. No. 7, fol. 148, 155*; the bill was filed to obtain a conveyance of lands in specific performance of a contract; it was stated in the bill, that the infant defendants lived in Adams County in Pennsylvania; and subpœnas were prayed generally. Upon which a commission was, on the 14th of December, 1802, issued to one commissioner only in Frederick County in this State, which is conterminous with Adams County in Pennsylvania; who in pursuance thereof appointed a guardian, stated to be of Frederick County, by whom the answers were taken and returned. The inference from this case is, that it was believed to be more convenient thus to send the commission to one commissioner in Frederick than to four in Pennsylvania.

Such appears to have been the understanding of the profession as to the practice when the Legislature declared, that in cases of

(g) PERKINS v. GLEAVES.—HANSON, C., February, 1790.—Rule that Doctor William Gleaves shew cause to this Court on the first of April next, why an attachment should not issue against him for a contempt in refusing to answer on behalf of the infant to whom he was appointed guardian *ad litem*, by a commission issued by this Court and returned. No cause having been shewn, it is ordered that attachment issue against William Gleaves to answer, &c.—*Chan. Proc. Lib. S. H. H. let. C. fol. 582.*